

Appeal Nos. 12-57026, 12-57211, 12-57205, 12-57247

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Appeal No. 12-57026

MICHAEL SHAMES, *et al.*,
Plaintiffs-Appellees,
v.
GORDON HANSMEIER,
Objector-Appellant,
v.
THE HERTZ CORPORATION, *et al.*,
Defendants-Appellees.

Appeal No. 12-57205

MICHAEL SHAMES, *et al.*,
Plaintiffs-Appellees,
v.
ANDREW CESARE; CERY PERLE;
GARY BISHOP; FRANK DEJULIUS,
Objector-Appellants,
v.
THE HERTZ CORPORATION, *et al.*,
Defendants-Appellees.

Appeal No. 12-57211

MICHAEL SHAMES, *et al.*,
Plaintiffs-Appellees,
v.
THOMAS J. LAVERY,
Objector-Appellant,
v.
THE HERTZ CORPORATION, *et al.*,
Defendants-Appellees.

Appeal No. 12-57247

MICHAEL SHAMES, *et al.*,
Plaintiffs-Appellees,
v.
MICHAEL J. SCHULZ,
Objector-Appellant,
v.
THE HERTZ CORPORATION, *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA – THE HONORABLE MICHAEL M. ANELLO, CASE No. 07-CV-2174-MMA(WMC)

**DEFENDANTS-APPELLEES' OPPOSITION
TO OBJECTOR-APPELLANTS' MOTION
FOR EXTENSION OF TIME**

O'MELVENY & MYERS LLP

MICHAEL F. TUBACH

TWO EMBARCADERO CENTER, 28TH FLOOR

SAN FRANCISCO, CA 94111-3823

TELEPHONE: (415) 984-8700

FACSIMILE: (415) 984-8701

*Attorney for Defendant-Appellee The Hertz Corporation
Additional Counsel on Signature Pages*

Yesterday, on the eve of their deadline to file an opening brief—and after requesting and receiving multiple extensions—Objector-Appellants filed a second Streamlined Request for an Extension of Time to File an Opening Brief. The Court properly denied this request sua sponte the same day. *See* 9th Cir. R. 31-2.2(a) (providing for “a single extension of time” under the Court’s streamlined procedure). In response, yesterday evening Objector-Appellants moved for an additional extension of four weeks to file their brief. This motion should be denied as well because: (1) it is untimely, and (2) Objector-Appellants have failed to demonstrate diligence and substantial need.

Pursuant to Ninth Circuit Rule 31-2.2(b), a written motion for an extension of time “shall be filed at least 7 days before the expiration of the time prescribed for filing the brief.” 9th Cir. R. 31-2.2(b). Objector-Appellants’ motion is untimely, and they have provided no reason why they could not have filed the motion earlier, in accordance with Circuit Rules.

Even if Objector-Appellants’ motion were timely, an extension “may be granted” under these circumstances “only upon written motion supported by a showing of diligence and substantial need.” 9th Cir. R. 31-2.2(b). Objector-Appellants have not met this burden, in part because they apply the wrong legal standard. Despite the fact that the Court’s denial of Objector-Appellants’ second streamlined request for an extension specifically directed Objector-Appellants to

the correct provision, they mistakenly assert that their motion may be granted based upon a showing of “good cause,” which is the standard under Ninth Circuit Rule 31-2.2(a), not 31-2.2(b). *See* 9th Cir. R. 31-2.2(a) & (b); Objector-Appellants’ Mot. at 1.

Without even addressing the issue of diligence in the prosecution of this appeal, Objector-Appellants provide three cursory reasons for why they need another extension, none of which meets the “substantial need” requirement of Rule 31-2.2(b). First, Objector-Appellants offer that one of the three lawyers who have entered appearances on behalf of Objector-Appellants has two other briefs due within the next two weeks. Objector-Appellants’ Mot. at 2. Objector-Appellants do not explain why briefs due in two weeks would prevent them from filing a brief today.

Second, they claim the need for a further extension because “the associate handling this matter advanced her maternity leave date by one month and as such I must again become familiar with the case to prepare the opening brief.” *Id.* This reason raises more questions than it answers. Objector-Appellants do not explain when the associate became unavailable due to her maternity leave. Presumably this occurred yesterday or Objector-Appellants would have filed their motion for a further extension earlier. But by yesterday, the day before the opening brief is due, one would expect a fairly advanced draft of a brief to have been written already.

Perhaps most troubling is counsel's admission that he is not "familiar with the case" on the day before his opening brief is due, after having received multiple extensions to file the brief. And there is no mention at all of the schedules of the other lawyers who have entered appearances on behalf of other Objector-Appellants.

Finally, Objector-Appellants assert that the "press of other business" prevents them from filing on time, *id.*, but Ninth Circuit Rule 31-2.2(b) is very clear that "[a] conclusory statement as to the press of business does not constitute a showing of diligence and substantial need."

Objector-Appellants have failed to establish diligence *and* substantial need, as required under Rule 31-2.2(b). Objector-Appellants' motion should be denied.

Dated: April 26, 2013

O'MELVENY & MYERS LLP
MICHAEL F. TUBACH, SBN: 145955

/s/ Michael F. Tubach
MICHAEL F. TUBACH
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700

Counsel for Defendant-Appellee The Hertz
Corporation and Defendant-Appellee Dollar
Thrifty Automotive Group, Inc.

Dated: April 26, 2013

CROWELL & MORING LLP
GREGORY D. CALL, SBN: 120483
BEATRICE B. NGUYEN, SBN: 172961

/s/ Gregory D. Call
GREGORY D. CALL

275 Battery Street, 23rd Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827

CROWELL & MORING LLP
JENNIFER S. ROMANO, SBN: 195953
MICHAEL Y. KAO, SBN: 235263
515 South Flower Street, 40th Floor
Los Angeles, CA 90071
Telephone: (213) 622-4750
Facsimile: (213) 622-2690

Counsel for Defendants-Appellees
Enterprise Holdings, Inc. and Vanguard Car
Rental USA, LLC

Dated: April 26, 2013

MULVANEY BARRY BEATTY LINN
& MAYERS LLP
JOHN H. STEPHENS, SBN: 82971

/s/ John H. Stephens
JOHN H. STEPHENS

401 West A St., 17th Floor
San Diego, CA 92101
Telephone: (619) 238-1010
Facsimile: (619) 238-1981

Counsel for Defendant-Appellee Fox Rent A
Car, Inc.

Dated: April 26, 2013

KIRKLAND & ELLIS LLP
COREY C. WATSON, SBN: 204679

/s/ Corey C. Watson

COREY C. WATSON

333 South Hope Street
Los Angeles, CA 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Counsel for Defendant-Appellee Avis
Budget Group, Inc.

Dated: April 26, 2013

WEINTRAUB TOBIN CHEDIAK
COLEMAN GRODIN
CHARLES L. POST, SBN: 160443
DALE C. CAMPBELL, SBN: 99173
SCOTT M. PLAMONDON, SBN:
212294

/s/ Scott M. Plamondon

SCOTT M. PLAMONDON

400 Capitol Mall, 11th Floor
Sacramento, CA 95814
Telephone: (916) 558-6000
Facsimile: (916) 446-1611

Counsel for Defendant-Appellee
California Travel and Tourism
Commission

FILER'S ATTESTATION

I, Michael Tubach, hereby certify that the content of this DEFENDANTS-APPELLEES' STATEMENT OF OPPOSITION TO OBJECTOR-APPELLANTS' MOTION FOR EXTENSION OF TIME is acceptable to all parties required to sign. All parties authorize me to affix their CM/ECF electronic signatures to this DEFENDANTS-APPELLEES' STATEMENT OF OPPOSITION TO OBJECTOR-APPELLANTS' MOTION FOR EXTENSION OF TIME.

Respectfully submitted,

Dated: April 26, 2013

O'MELVENY & MYERS LLP
MICHAEL F. TUBACH

/s/ Michael F. Tubach
MICHAEL F. TUBACH

Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700

Counsel for Defendant-Appellee The Hertz Corporation and Defendant-Appellee Dollar Thrifty Automotive Group, Inc.

9th Circuit Case Number(s) 12-57026, 12-57211, 12-57205, 12-57247

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 04/26/2013 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 04/26/2013 .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

SEE ATTACHED LIST

Signature (use "s/" format)

/s/

CASE PARTICIPANTS LISTED BELOW WILL NOT RECEIVE THIS ELECTRONIC
NOTICE:

Michael L. Weiner, Attorney
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036

Scott M. Plamondon
Weintraub Genshlea Chediak Law Corporation
11th Floor
400 Capitol Mall
Sacramento, CA 95814

Thomas J. Lavery
9200 W 174th Street
Tinley Park, IL 60487